ment for he says, in discussing the theory of *Warren* v. *Stoddart,* that the buyer would have to accept if the duty to mitigate by replacement required him to buy from the delinquent seller "if the article can be obtained only from him, *or because he offers it cheaper than it can be obtained from others*". It seems then that a mere unimportant circumstance has been made a condition by the later decisions.

The solution seems to lie in the abandonment of the forced distinctions between waiver, substitution, and mitigation. The sole question should be: Is it reasonable under all the circumstances that the new offer should be accepted? So far the courts have borne a prejudice against a defaulting contractor which the law should not recognize, if it is to be consistent with the generally accepted principle of *Miller* v. *Mariner's Church.* If the courts would bear in mind that "the innocent party is simply entitled to his real loss" and that it is not criminal to break a contract, they would fall in line with *Lawrence* v. *Porter* with much greater alacrity.

Other cases in accord with the principle but not mentioned above are: *Ashley* v. *Rocky Mountain Bell T. Co.,* 25 Mont. 286 (but see *Brazell* v. *Cohn,* 32 Mont. 556); *Lande* v. *Hyde,* 66 Misc. Rep. (N. Y.) 259; *Heilbroner* v. *Hancock,* 33 Tex. 715. There are some pertinent dicta in: *Howard* v. *Vaughan-Monnig Shoe Co.,* 82 Mo. App. 405, 410; *Levin* v. *The Standard Fashion Co., supra,* at 409; *Chisholm* v. *Assurance Co.,* 112 Mich. 50, 56; *Jackson* v. *Independent School District,* 110 Iowa, 313 (but see *The Louis Cook Mfg. Co.* v. *Randall,* 62 Iowa, 244).

There is a comprehensive note taking an opposite view from this one in 10 MICH. LAW REV. 315. A. J. L.

"ANGLO-SAXON" AND "TEUTONIC" STANDARDS OF JUSTICE.—In *The Kaiser Wilhelm II,* 230 Fed. Rep. 717, the British shipbuilding firm of Harland & Wolff filed a libel against the steamship *Kaiser Wilhelm II,* owned by the North German Lloyd, a German corporation, for repairs made on the ship in libelant's shipyard in England. This suit was commenced before the United States entered the war, and the court made an order dismissing the libel on the ground that Great Britain and Germany had each enacted laws forbidding its subjects from making any payments to the subjects of the other, and as these enactments were merely declaratory of the common law of nations, neutrality would be best preserved by applying them to litigation in a neutral court. This order was reversed on appeal, for the reason that the vessel had been enabled to seek protection in an American port through the very repairs the libelant had made, and the lien which the libelant had upon the vessel would be lost if the cause were dismissed. 246 Fed. Rep. 786.

But while this appeal was pending the United States entered the war as an ally of Great Britain against Germany, and the vessel was taken over by the United States government. These facts, under the admiralty practice, came properly before the court on the appeal, and it was held that justice to both litigants could best be secured by retaining jurisdiction until after the war, so that the German owner might have an opportunity to litigate its

rights in case relations with this country were hereafter resumed, and the rights of the United States government might be determined in relation to the rights of the British lienor. In explaining this decision the court, made up of BUFFINGTON, MCPHERSON and WOOLLEY, circuit judges, proceeded to say:—

"In following this course, and protecting the unprotected rights of an absent German citizen while this country is at war with the Imperial Government of its country, we are impelled by three all-sufficient reasons: First, the *innate sense of fairness, decency, and justice, which respects the rights of an enemy;* second, the *broad principles of international intercourse,* which leads courts and nations that believe in international rights, to be the more careful to observe them toward belligerents; and lastly, because the awarding to this German citizen, with whom our country is at war, the careful preservation until times of peace of its rights is in line with those *high ideals of Anglo-Saxon justice* which led the British courts years ago, in *Ex-parte Boussmaker,* 13 Vesey, 71, decided in 1806, to allow the claim of an alien enemy to be proved in time of war and the dividends held by the British court until peace. Indeed, the fact that our country is now at war with Germany is all the more reason why this court should most scrupulously award to this German citizen those international and equitable rights which no fair-minded people ever deny even to their enemies in times of war."

In contrast with Germany's cynical, brutal and systematic policy of denying all rights to its enemies in time of war, this striking illustration of the moral quality underlying the Anglo-Saxon common law brings out into strong relief the reason for the world war and the immense issue at stake.

E. R. S.

THE FEDERAL BANKRUPTCY ACT AND ITS EFFECT ON STATE INSOLVENCY LAWS.—Since *Sturgis* v. *Crowninshield,* 4 Wheat. 122, it has been clear that State Insolvency Laws were valid (within certain well-defined limits) during the non-existence of a Federal Bankruptcy Act, and that upon the enactment of a Federal Bankruptcy Act the State laws were superseded and suspended so far as they were in conflict with the Federal legislation. The difficulty has been in determining when there was such conflict, and it has arisen in various ways. For instance, the Federal Bankruptcy Act permits any natural person to become a voluntary bankrupt, but provides that no involuntary proceedings shall be taken against a farmer or a wage earner, or a person owing less than $1,000. The question has frequently been raised whether State Insolvency Laws are still effective in the cases of persons thus exempted by the Federal Act, and has been variously decided. See *Littlefield* v. *Gay,* 96 Me. 422; *Lace* v. *Smith,* 34 R. I. 1 (commented on in 11 MICH. L. REV. 60); *Rockville Bank* v. *Latham,* 88 Conn. 70; and *Pitcher* v. *Standish,* 90 Conn. 601 (commented on in 15 MICH. L. REV. 68). The Supreme Court of the United States, in the recent case of *Stellwagen* v. *Clum,* 38 Sup. Ct. 215, has now passed on another phase of the same question.

An Ohio statute (§§ 6343-4, Rev. Stat. Ohio; §§ 11102-5, General Code of Ohio) provides that if an insolvent debtor makes a conveyance or